

SFA-FSMC Prototype Contract

This sample contract is based on the requirements contained in 7 CFR Parts 210, 215, 220, 225, 226, 245, 250, 3016, 3017, 3018 and 3019 and USDA's Contracting with Food Service Management Companies – Guidance for School Food Authorities (SFAs) – April 2009 manual. Language has also been added to bring the sample contract into compliance with the Procurement Requirements for the National School Lunch, School Breakfast and Special Milk Programs Final Rule published in the Federal Register on October 31, 2007 and the Management of USDA Foods in Child Nutrition Programs, the Nutrition Services Incentive Program, and Charitable Institutions Final Rule published in the Federal Register on August 8, 2008.

Prior to the contract being signed by either party, all proposed contracts between a School Food Authority and a food service management company must be submitted for review and approval by the VT Agency of Education through the Child Nutrition Programs, 120 State Street, Montpelier, VT 05620 . Any changes to the contract required by the State agency (SA) must be made to the contract or all costs resulting from the contract are unallowable costs and cannot be paid from the nonprofit food service account.

PLEASE NOTE*** It is not required that a SFA purchase a particular Point Of Service System when contracting with a FSMC. If the SFA required a POS system, this requirement and all specifications must have been included in the RFP. The sample contract may have some modifications to meet your needs or local requirements. You should have your legal staff review the contract and amend to ensure that the contract reflects the best terms possible for the SFA and covers all facets of your food service operation.

The sample contract contains choices. The school business office or designee must read the contract and select the desired choice and delete the language that was not selected. The contract must be prepared by the SFA, not the FSMC.

Upon completion of the contract, complete the checklist to ensure all requirements are included. Submit the checklist with your proposed contract for State Agency review.

If you have any questions regarding the Prototype Contract or required language, please call Laurie Colgan, Child Nutrition Programs at (802) 828-5153, or by email at laurie.colgan@state.vt.us

ARTICLE I INTRODUCTION

- 1.1 Date of and Parties to the Agreement. This agreement, dated _____, is between **[SCHOOL FOOD AUTHORITY NAME]**, hereafter called the School Food Authority (SFA), and **[FOOD SERVICE MANAGEMENT COMPANY NAME]** (the FSMC).
- 1.2 Purpose of Agreement. This agreement sets forth the terms and conditions upon which the SFA retains the FSMC to manage and operate the SFA's food service for the SFA's students, employees, and visitors.
- 1.3 Duration of Contract. The initial term of this agreement commences on _____, and continues until _____ [this date may be no more than one year from the date the agreement commences], unless terminated by either Party as hereinafter provided. The agreement is subject to four (4) additional one-year renewals upon the consent of both parties. **[7 CFR § 210.16 (d)] [Note to SFA staff: can be less than 4 one-year renewals, but cannot be more than 4. Contracts may not contain automatic renewal provisions. Delete note before printing.]**

ARTICLE II RELATIONSHIP OF THE PARTIES

- 2.1 Independent Contractor. The FSMC shall be an independent contractor and shall retain control over its employees and agents. Nothing in this Agreement shall be deemed to create a partnership, agency, joint venture or landlord-tenant relationship.
- 2.2 FSMC Responsibilities. **[Note: These provisions are Non-negotiable, you may add others, but you cannot delete these. Delete this note before printing.]**
 - A. The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, State Agency (SA), United States Department of Agriculture (USDA) and the State Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit. **[Recordkeeping, 7 CFR Part 3016.42 and Part 3019.53 and § 210.16(c)(1)]**
 - B. The FSMC shall to the maximum extent possible, utilize USDA Foods made available by the SFA solely for the purpose of providing benefits for the SFA's food service operation. **[7 CFR § 210.16(a)(6)]**
 - C. The FSMC shall have State and/or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract. The

FSMC must meet all applicable State and local health regulations in preparing and serving meals at the SFA facility. [7 CFR § 210.16(c)(2)]

- D. The FSMC shall prepare and serve a variety of appetizing, high quality, wholesome, and nutritious meals and a la carte items for the SFA's students, employees, and visitors in accordance with the terms and conditions of this agreement. The FSMC agrees that it will perform the work described in this agreement in full compliance with all applicable laws, rules, and regulations adopted or promulgated by any federal or state regulatory body or governmental agency.
- E. The FSMC agrees to meet all requirements and performance standards that may be specified by rule or regulation by any administrative officials or bodies charged with enforcement of any state or federal laws on the subject matter of this agreement.
- F. The FSMC agrees to assume full responsibility for the payment of all contributions, assessments, both state and federal, including, but not limited to, wages, pension benefits, federal, state and local employment taxes, unemployment taxes, social security, and worker's compensation costs, as to all employees engaged by it in the performance of this agreement.
- G. The FSMC agrees to furnish the SFA, upon request, a certificate or other evidence of compliance with state or federal laws regarding contributions, taxes, and assessments on payrolls.

2.3 SFA - Responsibilities.

The SFA shall:

- A. Ensure that the food service operation is in conformance with the school food authority's agreement under the Program [7 CFR § 210.16(a)(2)]
- B. Monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations [7 CFR § 210.16(a)(3)]
- C. Retain control of the quality, extent, and general nature of its food service and the prices to be charged for meals [7 CFR § 210.16(a)(4)]
- D. Retain signature authority on the State agency-School Food Authority agreement, free and reduced price policy statement and Claims for Reimbursement [7 CFR § 210.16(a)(5)]

- E. Retain title to all USDA Foods; and ensure that all USDA Foods made available to the FSMC, including processed USDA Foods, accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein. All refunds and rebates received from processors must be retained by the SFA [7 CFR § 210.16(a)(6)]
- F. Maintain all applicable health certification and assure that all State and local regulations are being met by the food service management company preparing or serving meals at a school food authority facility [7 CFR § 210.16(a)(7)]
- G. Establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning [7 CFR § 210.16(a)(8)]
- H. Make reasonable regulations with regard to all matters under its supervision and control, and the FSMC shall comply with them as soon as reasonably possible after proper notification is given;
- I. Retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation and retain control for establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals; [7 CFR 210.16(a)(4)]
- J. Retain signature authority and be responsible for all contractual agreements entered into in connection with the school nutrition program. [7 CFR § 210.21];
- K. Ensure resolution of program review and audit findings. [7 CFR § 210.9(b)(17)].
- L. The FSMC shall adhere to the 21-day cycle menu that was provided in the RFP or in the FSMC's proposal. [7 CFR § 210.16 (b)(1)]
- M. Provide detailed specifications for each food component or menu item specified in 7 CFR Part 210, and include these specifications in the IFB or RFP. [7 CFR § 210.16(c)(3)]
- N. Maintain applicable health certification and be assured that the FSMC is meeting all state and local regulations in preparing or serving meals at any location other than the facilities. [7 CFR § 210.16(a)(7)]
- O. Develop, distribute, and collect the parent letter and application for free and reduced price meals. [7 CFR § 245.6]
- P. Determine eligibility and verify applications for free and reduced price meals benefits and will conduct any hearings related to such determinations. [7 CFR § 245.6, 6a, 7, 10]

- Q. Assure that the maximum amount of USDA Foods are received and utilized by the FSMC. [7 CFR § 210.9(b)(15)].
- R. Maintain responsibility for securing processing agreements, private storage facilities, or any other aspect of financial management relating to USDA Foods. [7 CFR § 250.15]

ARTICLE III FOOD SERVICE PROGRAM

- 3.1 Location. The FSMC shall prepare and serve meals for the schools listed in **Appendix ____**. The SFA and the FSMC may agree to add other locations.
- 3.2 Calendar. All meals will be provided in accordance with the approved calendar, attached as **Appendix ____**. For the first twenty-one (21) days of food service, the FSMC will adhere to the 21-day cycle menu agreed upon by FSMC and the SFA. Changes thereafter may only be made with approval of the SFA. [7 CFR § 210.16 (b)(1)].
- 3.3 Meal Program. The FSMC shall provide nutritious, high-quality breakfasts, lunches, snacks, milk service, a la carte food, fresh fruits and vegetables, after-school snacks and/or suppers, summer meals, and vending items **[delete any items not applicable]** in accordance with the following terms:
- A. In order to offer a la carte food service, the FSMC must also offer free, reduced price and paid reimbursable meals to all eligible children. [7 CFR § 210.16(a)]
- B. All reimbursable lunches, breakfasts and snacks shall meet the qualifications for USDA reimbursement as described in 7 CFR § 210.10, 220.8, 225.16, and 226.20, et seq. **(Delete reference(s) to programs you do not offer. 210 – NSLP, 220 – SBP, 225 - SFSP, 226 - CACFP)**
- C. All reimbursable milks shall meet the qualifications for USDA reimbursement under the Special Milk Program as described in 7 CFR § 215. **[delete if not applicable]**
- D. The SFA shall administer the application process for all free and reduced price meals, and shall establish and notify parents and guardians of program criteria for eligible students. Both the SFA and the FSMC shall be responsible for protecting the anonymity of students receiving free or reduced price meals. [7 CFR § 210.16 (a)(5)]
- E. The FSMC shall collect gross sale receipts, on behalf of the SFA, for meals, a la carte items, and vending items. **(Delete items the FSMC does not handle.)** Gross cash receipts shall be turned over to the SFA or deposited in the SFA's account on a daily basis.

- F. The SFA and FSMC shall purchase, to the maximum extent practicable, domestic commodities or products for use in meals served in the NSLP in compliance with the Buy American Provision under 7 CFR 210.21(d)(2) and 7 CFR Part 250.
- 3.4 Nutrition Awareness Programs. In cooperation with the SFA, the FSMC shall conduct ongoing nutrition awareness programs for students, teachers, parents, and other interested parties and participate as a member of the School Wellness Committee.
- 3.5 Special Diets. The FSMC shall, in accordance with SFA policy, supply special diets for students where medically necessary and when prescribed by a licensed physician.
- 3.6 Advisory Board. The FSMC shall cooperate with the SFA's Advisory Board, consisting of students, parents, SFA staff, and a FSMC representative in developing menus and other food service programs.
- 3.7 Catering. Upon request by the SFA, the FSMC shall provide catered food service at times and prices mutually agreed upon **[delete if not applicable]**. The SFA may, if a price cannot be agreed upon or the FSMC cannot provide the service, obtain outside catering services. The FSMC shall submit catering invoices by the end of the current month. Costs of catered functions shall not be supported by the nonprofit foodservice account funds. The FSMC shall provide the SFA with copies of invoices and an invoice control log within ten (10) days after the end of each month. The FSMC shall provide a method which delineates the cost allocation for special functions conducted outside the nonprofit school food service. The method should demonstrate that labor costs are not being double billed for program meals and special function meals.
- 3.8 Environmental Protection Agency Compliance. In performance of this agreement, the FSMC shall comply with Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and EPA Regulations 40 CFR Part 15, et seq. Environmental violations shall be reported to the United States Department of Agriculture and US EPA Assistant Administrator for Enforcement, and the FSMC agrees not to utilize a facility listed on the EPA's "List of Violating Facilities." **[Part 3016.36(i)]**.
- 3.9 Energy Policy and Conservation Act Compliance. The SFA and the FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the Energy Policy and Conservation Act. **[Part 3016.36(i)]**.
- 3.10 Contract Work Hours and Safety Standards Act Compliance. In performance of this agreement, and as employer for all management food service employees, the FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act. **[Part 3016.36(i)]**.
- 3.11 Debarment Certification. The FSMC shall complete and submit to the SFA the United States Department of Agriculture (USDA) Certification Regarding Debarment. The certification must also accompany the four (4) additional one-year renewals. **[7 CFR § 3017.300]**.

- 3.12 Lobbying. Pursuant to section 1352, Title 31, US Code, the FSMC shall complete and submit a Certificate Regarding Lobbying and a Disclosure of Lobbying Activities to the SFA. These certifications must accompany the four (4) additional one-year renewals. [7 CFR § 3018].
- 3.13 USDA Foods (Additional language required as a result of the Final Rule effective November 6, 2008, 7 CFR 250 Management of USDA Foods in Child Nutrition Programs, The Nutrition Services Incentive Program, and Charitable Institutions.).
- A. The FSMC will provide the following services in relation to USDA Foods **(Delete or add duties as necessary)**:
 - 1. Preparing and serving meals
 - 2. Ordering or selection of USDA Foods, in coordination with the SFA and in accordance with 7 CFR 250.52
 - 3. Storage and inventory management of USDA Foods in accordance with 7 CFR 250.52
 - 4. Payment of processing fees and or submittal of refund requests to a processor on behalf of the SFA, or remittance of refunds for the value of USDA Foods in processed end products to the SFA, in accordance with subpart C of 7 CFR 250
 - B. The FSMC must credit the SFA for the value of all USDA Foods received for use in the SFA's meals service in a school year (including both entitlement and bonus foods), including the value of USDA Foods contained in processed end products if the FSMC procures processed end products on behalf of the SFA, or acts as an intermediary in passing the donated food value in processed end products on to the SFA.
 - C. The FSMC shall credit for USDA Foods by disclosure, i.e., the FSMC shall credit the SFA for the value of USDA Foods by disclosing, in its billing for food costs submitted to the SFA, the savings resulting from the receipt of USDA Foods for the billing period. Crediting by disclosure does not affect the requirement that the FSMC shall only bill the SFA for net allowable costs. The FSMC shall use the USDA's [November 15th] list of USDA Food values to report the value of donated foods in its disclosure of the value of USDA Foods to the SFA on its invoices.
 - D. All USDA Foods (this includes but is not limited to ground beef, ground pork, and all processed end products) shall be used in SFA's food service operations.
 - E. The FSMC must meet the general requirements in 7 CFR 250.14(b) for the storage and inventory management of USDA Foods. Additionally, the FSMC must ensure that its system of inventory management does not result in the SFA being charged for USDA Foods.

- F. Upon the termination of this Agreement, the FSMC must return all unused USDA Foods, including but not limited to ground beef, ground pork, and processed end products to the SFA.
- G. The SFA must ensure that the FSMC has credited it for the value of all USDA Foods received for use in the SFA's meal service in the school year. The FSMC agrees to cooperate and provide information reasonably requested by the SFA.
- H. The FSMC must ensure compliance with the requirements of subpart C of 7 CFR part 250 and with the provisions of the distributing and/or the SFA's processing agreements in the procurement of processed end products on behalf of the SFA, and will ensure crediting of the SFA for the value of USDA Foods contained in such end products at the processing agreement value.
- I. The FSMC shall not enter into the processing agreement with the processor required in subpart C of 7 CFR 250.
- J. The distributing agency, sub distributing agency, SA or SFA, the Comptroller General or the US Department of Agriculture, or their duly authorized representatives, may perform onsite reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
- K. The FSMC will maintain records to document its compliance with 7 CFR 250.54(b).
- L. Any extension or renewal of the Agreement is contingent upon fulfillment of all provisions in this Agreement relating to USDA Foods.
- M. The FSMC must maintain the following records relating to the use of USDA Foods:
 - 1. The USDA Foods and processed end products received from, or on behalf of, the SFA, for use in the SFA's food service operations;
 - 2. Documentation that it has credited the SFA for the value of all USDA Foods received for use in the SFA's food service operations in the school year, including, in accordance with the requirements in 7 CFR 250.51(a), the value of USDA Foods contained in processed end products; and
 - 3. Documentation of its procurement of processed end products on behalf of the SFA, as applicable.
- N. The SFA shall ensure that the FSMC is in compliance with the requirements of this section through its monitoring of the food service operation, as required in 7 CFR parts 210, 225, or 226, as applicable.

- O. The SFA shall conduct a reconciliation at least annually (and upon termination of the Agreement) to ensure that the FSMC has credited it for the value of all USDA Foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR 250.51(a), the value of USDA Foods contained in processed end products.
- P. The FSMC will assure that USDA Foods are not used for special functions conducted outside the nonprofit school food service.

ARTICLE IV MANAGEMENT AND PERSONNEL

- 4.1 FSMC Management and Professional Employees. The FSMC shall provide sufficient and qualified management and professional employees to manage the food service operations and supervise all employees employed therein.
- 4.2 Non-Management Employees. All non-management food service employees shall be employees of the SFA. FSMC. **(Delete SFA or FSMC as appropriate)**. The FSMC managers shall direct and supervise SFA **(delete SFA if there are no SFA employees)** food service employees.
- 4.3 Student Workers. **[Delete if not applicable]** The SFA has a policy of providing work experience for appropriate students as part of the educational curriculum. In furtherance of that policy, the SFA may assign students for work in the food service operation in such numbers as are agreed upon between the SFA and the FSMC.
- 4.4 Payroll and Taxes. The FSMC shall prepare and process the payroll for and shall pay its employees directly. The FSMC further warrants that it shall withhold or pay as appropriate all applicable federal and state employment taxes and payroll insurance with respect to its employees, specifically including, but not limited to, any income, social security, and unemployment taxes and workers' compensation payments.
- 4.5 Workers' Compensation Insurance. The FSMC shall procure Workers' Compensation Insurance or shall maintain a system of self-insurance in conformance with applicable state law covering its employees and shall provide proof of such coverage or system to the SFA.
- 4.6 Nondiscrimination. The SFA and the FSMC shall comply with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). **[Part 3016.36(i)]**
- 4.7 Fingerprinting Requirements. The FSMC shall be responsible for obtaining any necessary background checks or fingerprint clearances for its employees as required by law. The FSMC shall provide all necessary forms and/or documentation for such employees to the SFA.

- 4.8 The FSMC will assure conformance with all civil rights requirements that are applicable to the SFA.

ARTICLE V INVENTORIES, FACILITIES, EQUIPMENT, AND MAINTENANCE

- 5.1 Inventories of Food and Supplies. The SFA and FSMC shall conduct a joint inventory of existing food and operational supplies at both the beginning and the end of this Agreement. If the ending inventory is less than the value of the beginning inventory the FSMC will credit the SFA for the difference. The cost of food and operational supplies ordered by FSMC on behalf of the SFA in performance of this agreement shall be paid for by the FSMC and the FSMC shall then be reimbursed for those costs incurred. The inventory of food and operational supplies shall remain the SFA's property.
- 5.2 The SFA and the FSMC shall inventory the equipment and commodities owned by the SFA at the beginning of the Agreement year, including, but not limited to, consumable and non-consumable flatware, trays, china, glassware and food. The FSMC shall be responsible for reimbursing the SFA for all shortages noted on the year-end inventory.
- 5.3 Office Facilities. The SFA shall provide, without cost to the FSMC, suitable office facilities, including furniture and equipment, for use by the FSMC in performance of this agreement. The FSMC shall take reasonable care of the office facilities and equipment, and shall return them to the SFA in good condition upon termination of this agreement, ordinary wear and tear excepted.
- 5.4 Sanitation. The FSMC shall be responsible for usual and customary cleaning and sanitation of the SFA's food service facilities.
- A. The FSMC shall be responsible for housekeeping and sanitation in areas used for food preparation, storage, and service, and shall clean and sanitize dishes, pots, pans, utensils, equipment, and similar items. The SFA shall designate a refuse collection area and the FSMC shall be responsible for transporting refuse to the designated refuse collection area.
- B. The SFA shall be responsible for the required cleaning and maintenance of dining areas, as well as periodic cleaning of all ceilings, ceiling fixtures, air ducts, and hood vent systems (as per local ordinance). The SFA shall also provide and maintain adequate fire extinguishing equipment for food service areas, provide necessary pest control, and shall be responsible for the removal of refuse from the designated refuse collection area.
- C. If the SFA is unable to perform any of its responsibilities described in subparagraph B above, the FSMC may, with the written approval of the SFA, temporarily assume those responsibilities and shall bill the SFA for any costs incurred.

- 5.5 Maintenance. The SFA shall provide, at the SFA's expense, maintenance personnel and outside maintenance services, parts, and supplies required to properly maintain the food service facilities and equipment.
- 5.6 Condition of Facilities and Equipment. The SFA shall obtain necessary health permits and certification for its facilities. The premises and equipment provided by each party in performance of this agreement shall comply with all applicable building, safety, sanitation, and health laws; and shall satisfy all permit requirements, ordinances, rules, and regulations, including the federal Occupational Health and Safety Act of 1970 or applicable state act and standards promulgated thereunder. FSMC shall take reasonable and proper care of all premises and equipment in its custody and control and shall use them in a manner that will not cause violation of applicable laws, ordinances, rules, and regulations, including any reporting and record-keeping requirements. If at any time the FSMC is notified by an authorized government agency that the SFA's premises or equipment are not in compliance with any law, ordinance, rule, or regulation, the FSMC shall immediately inform the SFA of such notification.
- 5.7 Transportation Equipment and Vehicle. The SFA shall provide transportation vehicles and equipment to be used in the food service program. Maintenance, fuel, insurance, and equipment for transportation shall be the responsibility of the SFA. **[Delete if not applicable]**
- 5.8 Nonconforming Facilities and Equipment. Each party shall, at no cost to the other, make all repairs, alterations, modifications, or replacements which may be necessary to correct any conditions of premises or owned equipment which violate applicable building, sanitation, health, or safety law, ordinance, rule or regulation.

ARTICLE VI FINANCIAL AND PAYMENT TERMS

- 6.1 Billing for Reimbursements, Administrative Fee, and Management Fee. **(A)**The FSMC must separately identify for each cost submitted for payment to the school food authority the amount of the cost that is allowable (can be paid from the nonprofit food service account) and the amount that is unallowable (cannot be paid from the nonprofit food service account). **(B)**The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. **[Pick A or B and delete the one you did not select.] [SFA Please Note: Unallowable costs cannot be paid out of the nonprofit food service account. Unallowable costs would include interest payments to the FSMC. Delete this note prior to printing the contract.]** The FSMC shall submit supporting documents and invoice to the SFA monthly for the following direct, actual costs, administrative fee and management fee **(Delete or add items as needed):**

- A. The actual and direct costs for the wages, taxes, and benefits of the food service director and other management employees on the FSMC's payroll.
- B. Direct operating costs paid by the FSMC arising from performance of this agreement. Direct operating costs are defined as:
- Food and supply purchases by the FSMC necessary to perform this agreement
 - Food service program travel and mileage costs incurred
 - Advertising and promotions within the SFA
 - The FSMC's insurance necessary for performance of this agreement **[delete if not included as part of the bidding/proposal process]**
 - Service business and occupation tax
 - Employee training and development costs
 - Laundry, linen, and uniforms
 - Licenses and permits for performance of this agreement
 - USDA Foods delivery charges and storage rental
- C. The FSMC's management fee of **\$X** per month for **ten (10) or X** months or a charge of **\$0.0XXX** per meal and meal equivalent. **(Pick a fixed or per meal charge, the period for which it is to be paid, and delete reference to the other method. Typically the Management fee represents the profits.)** The following functions are the FSMC's responsibility, and will be included in such fees: (add all that apply)
- D. The FSMC's administrative fee of **\$X** per month for ten (10) months or a charge of **\$0.0XXX** per meal and meal equivalent. **(Pick a fixed or per meal charge and delete reference to the other method. The administrative fee represents the overhead costs.)** The following functions are the FSMC's responsibility, and will be included in such fees:
- Corporate supervision
 - Financial reporting and analysis
 - Field auditing
 - Marketing Assistance
 - Purchasing administration
 - **(Add any others that apply)(Delete this note prior to printing.)**
- E. Per Meal Defined:
- For management fee and administrative fee purposes, each reimbursable lunch shall be considered one (1) meal/meal equivalent, each reimbursable breakfast shall be considered one-half (1/2) of a meal/meal equivalent, and one reimbursable snack shall be considered one-fourth (1/4) of a meal/meal equivalent. **(Note to SFA: The allocation of meal equivalents by meal type is negotiable.)**
 - For management fee and administrative fee purposes, the number of meal equivalents shall be determined by dividing the total of all sales except reimbursable meal sales (including cash for adult meals, a la carte meals, and

snack bar sales) by the free reimbursement rate plus the per meal value of commodities of the current school year. **(The meal equivalent rate must be derived by dividing the total of sales except for reimbursable meal sales (you can include adult meals, a la carte and other items sold, this is negotiable) by at least the free reimbursement rate plus the per meal value of commodities of the current school year, these rates will change each school year.)**

F. Expenses paid by the FSMC and not charged to the SFA or the food service operation and are unallowable include:

- Reports filed to the State
- Corporate income tax

- 6.2 Invoice Due Date. Invoices submitted to the SFA by the FSMC will be paid according to the SFA's "Accounts Payable Cut-Off Schedule," attached as Appendix ___. If invoices are received in the SFA's Accounting Department by the cut-off date, and they pass audit, payment will be made on the release date listed on the schedule. The FSMC will be notified immediately of any invoice that does not pass audit. The SFA shall pay all amounts when due, but if the SFA does not make a payment when due, no interest shall be charged by the FSMC on that past due receivable, pursuant to 7 CFR § 210.16(c). **(Note to school: If you include a contract provision to pay interest or a penalty for late payment you may not pay the interest or penalty from the nonprofit food service account. Delete before printing contract.)**
- 6.3 Break-Even Guarantee. The SFA and the FSMC shall work together to ensure a financially sound and well-run operation. The FSMC shall guarantee that the food service program will achieve financial break-even, defined as "generated program revenues will be sufficient to cover all actual and direct operating costs incurred." Actual and direct operating costs are as described in paragraphs 6.1 A - E above.
- 6.4 Operating Statements. The FSMC shall submit monthly operating statements to the SFA by the tenth (10th) of the next month. This statement shall reflect all activity for the previous calendar month.
- 6.5 Renegotiation of Financial Terms. The renegotiation of price terms under this agreement is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of the parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms of this agreement are based, then the contract and all related documents must be re-bid.
- 6.6 Availability of Funds. Every payment obligation of the SFA under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the SFA at the end of the period for which funds are available. No liability shall accrue to the SFA in the event this provision is exercised, and

the SFA shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

- 6.7 Allowable costs. Allowable costs will be paid from the nonprofit school food service account to the FSMC net of all discounts, rebates and other applicable credits accruing to or received by the FSMC or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

The FSMC's determination of its allowable costs must be made in compliance with the applicable USDA and program regulations (7 CFR parts 210, 215, 220, 3016 and 3019, as applicable) and Office of Management and Budget Cost Circulars (A-87 cost Principles for State, Local Governments and Indian Tribal Governments, or A-122 Cost Principles for Non-profit Organizations, as applicable);

- 6.8 Discounts, Rebates and Other Applicable Credits. The FSMC must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. This information must be supplied on a **(pick one of the following: monthly, quarterly or annually or a time period of your choice as long as it is no less frequently than annually. It is recommended that this be done monthly.)**

The FSMC must identify the method by which it will report discounts, rebates and other credits allocable to the contract that are not reported prior to conclusion of the contract.

[Negotiate the method to be used to accomplish the above and insert it here. The language adopted should be compatible with the FSMC's and the SFA's accounting systems in order to facilitate entry of the amounts into the accounting system.]

The FSMC must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the SFA, the State agency, or the United States Department of Agriculture. The FSMC shall return the value of all discounts, rebates and other applicable credits allocable to the contract to the SFA. **[If you do not include the preceding sentence in the contract, or equivalent, and allow the FSMC to keep the value of the discounts, rebates or other applicable credits you are out of compliance with Federal Regulations.]**

- 6.9 FSMC records pertaining to the SFA shall be maintained at **(location name and address)** while the contract is in effect and for the required retention period.

ARTICLE VII GENERAL TERMS AND CONDITIONS

- 7.1 Compliance With Law. The FSMC shall comply with all laws, ordinances, rules, and regulations of all applicable federal, state, county, and city governments, bureaus, and agencies, regarding purchasing, sanitation, health, and safety of the food service operations and shall procure and maintain all necessary licenses and permits. The SFA shall cooperate,

as necessary, for the FSMC's compliance and procurement efforts. **The FSMC shall conduct program operations in accordance with 7 CFR Parts 210 (National School Lunch Program), 215(Special Milk Program), 220 (School Breakfast Program), 225 (Summer Food Service Program), 226 (Child and Adult Care Food Program), 245 and 250, and FCS instructions and policy. [Delete program references if not applicable].** USDA Suggested Language is in bold.

7.2 National School Lunch Program. In order to assist the SFA's participation in the National School Lunch Program:

- A. Any federally donated USDA Foods received by the SFA and made available to the FSMC shall be used only for the benefit of the SFA's food service operation. Any USDA Foods processing contracts shall be established by the SFA. All goods, services, and monies received as a result of rebate under a processing contract must be used in the SFA's nonprofit food service. 7 CFR § 210.16 (a)(6). The FSMC shall maintain a perpetual inventory record of USDA Foods.
- B. No payment shall be made for meals or snacks that are spoiled or unwholesome at the time of service, or do not meet specifications developed by the SFA, or do not otherwise meet the requirements of this agreement. **[7 CFR § 210.16 (c)(3).]** No deduction in payment shall be made by the SFA unless the SFA notifies the FSMC in writing within **XX** hours of the meal service for which the deduction is to be made, specifying the number of meals for which a deduction is to be made and describing the reasons for the deduction.
- C. The FSMC shall report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA. **[7 CFR 210.16(c)(1)].**

7.3 Comprehensive Insurance. The FSMC shall obtain and keep in force during this agreement, for the protection of the SFA and the FSMC, Comprehensive General Bodily Injury and Property Damage Liability Insurance in the combined single limit of no less than **X** dollars **(\$X,000,000)**. That insurance shall include, but not be limited to, Personal Injury Liability, Broad Form Property Damage Liability, Blanket Contractual Liability, and Products Liability, covering only the operations of the FSMC under this agreement, and shall deliver to the SFA a certificate evidencing such policies and coverage within thirty (30) days after the execution of this agreement by the parties. The insurance policies shall contain a covenant by the issuing company that the policies will not be canceled unless a thirty (30) day prior written notice of cancellation is given to the SFA. The policies for **\$X,000,000** coverage shall also name the SFA as an Additional Insured, but only with respect to operations of the FSMC under this agreement. **[Delete if not included as part of the bidding/proposal process. To protect the interests of the SFA, contracts for food service should contain language about insurance requirements. Contracts generally identify three liabilities, i.e., comprehensive general liability, workmen's compensation, and vehicle insurance. SFA's are reminded that the cost of unnecessary insurance is unallowable under Federal Cost Principles.]**

- 7.4 Indemnity. Unless otherwise expressly provided, the SFA and the FSMC shall remain responsible for all claims, liability, loss, and expense, including reasonable costs, collection expenses, and attorney's fees incurred, which arise by reasons of negligent or wrongful act or omission of the party, its agents, or its employees in the performance of its obligations under this agreement.
- 7.5 Trade Secrets. The FSMC and SFA shall designate any information they consider confidential or proprietary, including recipes, surveys and studies, management guidelines, operating manuals, and similar documents which it regularly uses in the operation of their business or which they develop independently during the course of this agreement. Information so designated and identified shall be treated as confidential by the FSMC and SFA, and the FSMC and SFA shall exercise the same level of care in maintaining the confidences of the other party as they would employ in maintaining their own confidences. All such materials shall remain the exclusive property of the party that developed them and shall be returned to that party immediately upon termination of this agreement. Notwithstanding, the Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) The copy right in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support. **[7 CFR § 3016.34]**.
- 7.6 Assignment. This agreement may not be assigned by either party, in whole or in part, without the written consent of the other party.
- 7.7 Notices. Any notice or communication required or permitted under this agreement shall be in writing and shall be delivered personally or sent by United States registered or certified mail, postage prepaid and return receipt requested, addressed to the other party as follows:
- Notices to the SFA:
Anytown SFA
123 Main Street
Anytown, State 00000
- Notices to the FSMC:
XYZ Food Service Management Company
123 State Street
Any Town, State 11111
- Other persons or places may also be designated, in writing, by either of the parties, during the term of this agreement. Notices shall be effective when received. Sent notices will be considered received forty-eight (48) hours after they are deposited in the US mail.
- 7.9 Catastrophe. With the exception of payment obligations for prior performance under this agreement, neither party shall be liable for the failure to perform their respective

obligations under this agreement when such failure is caused by fire, explosion, water, act of God, civil disorder, strikes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules or regulations, or other like causes beyond the reasonable control of such party, nor for any real or personal property destroyed or damaged due to such causes. The FSMC shall resume food service operations as soon as possible. **[Part 3016.36(i)].**

- 7.10 Termination for Cause. Either party may cancel the contract for cause by giving sixty (60) days notice in writing to the other party of its intention to do so. **[7 CFR § 210.16 (d)].**
- 7.11 Cure Period. If a cure or remedy is found for the termination request by mutual agreement of the contracting parties, the termination or non-renewal letter must be withdrawn in writing by the terminating party within the sixty (60) day period as described in paragraph 7.10 above. This letter should be counter-signed by the receiving party and the letter should become an amendment to this agreement. **[Part 3016.36(i)].**
- 7.12 Termination Without Cause. Either party may terminate the Agreement without cause. The party terminating the Agreement without cause shall give no less than sixty (60) days written notice to the other party of its intention to terminate the Agreement without cause.
- 7.13 Rights Beyond Termination. The right of termination referred to in this agreement is not intended to be exclusive, and is in addition to any other rights available to either party at law or in equity. If the FSMC breaches a material provision of the contract and fails to cure such breach within sixty (60) days after receiving written notice of such breach the SFA may elect to pursue any available legal, contractual or administrative remedy or the following sanctions: (i) for a first violation, a written reprimand; (ii) for a second violation, a **\$X** penalty; (iii) for a third violation, a **\$Y** penalty. For the purposes of the foregoing, a single violation means an event of the same or similar kind, without regard for the duration or number of personnel, equipment, students or meals involved. **[Part 3016.36(i)]. [The above language satisfies the requirements of the above referenced Part that contracts contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. You may substitute other language that also meets the requirements of Part 3016.36(i)] .**
- 7.14 Construction and Effect. A waiver of any failure under this agreement shall neither be construed as, nor constitute a waiver of, any subsequent failure. This agreement supersedes all prior negotiations, representations, or agreements. The Article and Paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the Articles and Paragraphs or be considered in their interpretation. The appendixes referred to herein are made part of this agreement by the respective references to them. This agreement may be executed in several counterparts, each of which shall be deemed an original.
- 7.15 Amendments to the Agreement. The parties cannot alter any provision in this agreement that is required by any law, rule or regulation. The parties cannot otherwise amend or alter this agreement, except as to minor, non-substantive provisions or issues that do not

materially affect the scope of work or the cost of the agreement. The parties must mutually agree, in a written document signed by both parties and attached to this agreement, to amend, add, or delete an Article or Appendix. Any amendment to this agreement shall become effective at the time specified in the amendment.

7.16 Notification of Termination:

The Vermont Agency of Education shall be notified immediately of termination action and reason for termination.

- 7.17 Any silence, absence or omission from the contract document specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc) and workmanship of a quality that would normally be specified by the SFA are to be used.
- 7.18 If the FSMC makes the purchases in a cost-reimbursable contract, the prices charged the SFA will be reasonable and necessary.
- 7.19 The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal or State reviews/audits, corresponding with the SFA's period of liability.
- 7.20 The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.

The parties agree that the terms of this Contract shall be in accordance with the Request for Proposal (RFP) published by the Board and any amendments to the RFP, and the proposal submitted by the FSMC which are kept on file at the Board Offices and through this reference, are incorporated into this contract. In the event that contradictory statements are contained in the RFP, the FSMC proposal, and this contract, the following order of precedence shall apply: contract, RFP, FSMC proposal. **[You may have another item prevail, or include different language. The intent of this statement is to incorporate the RFP into the contract.]**

SO AGREED:

Signature of Food Service Management Company's Authorized Representative	Title	Date
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Signature of School Food Authority's Authorized Representative	Title	Date
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DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ____ a. Bid/offer/application b. Initial award c. Post-award	3. Report Type: ____ a. Initial filing b. Material change For Material Change Only: Year ____ Quarter ____ Date of Last Report ____
4. Name and Address of Reporting Entity: ____ Prime ____ Subawardee Tier ____, if known Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency: 	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity: (if individual, last name, first name, middle) (Attach Continuation Sheet(s))	10. b. Individuals Performing Services (including address if different from No. 10,a.) (last name, first name, middle) SF-LLL-A if Necessary)	
11. Amount of Payment (check all that apply): \$ _____ ____ Actual ____ Planned	13. Type of payment (check all that apply): ____ a. retainer ____ b. one-time fee ____ c. commission ____ d. contingent fee ____ e. deferred ____ f. other; specify: _____	
12. Form of Payment (check all that apply): ____ a. cash ____ b. in-kind; specify: Nature _____ Actual _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contracted for Payment indicated in Item 11: (Attach Continuation Sheet(s) SF-LLL-A, if necessary)		
Are Continuation Sheet(s) SF-LLL-A Attached: Yes ____ (Number ____) No ____		
16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone: _____ Date: _____	
Federal Use Only:		

SF-LLL

Authorized for Local Reproduction Standard Form - LLL

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET
SF-LLL-A**

Reporting entity: _____ Page _____
of _____

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use of SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) Number, invitation for Bid (IFB) Number; grant announcement number; the contract, grant or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check all that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check all that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached. List number of sheets if yes.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348-00046), Washington, D.C. 20503.

Certification regarding lobbying

Applicable to Grants, Subgrants, Cooperative Agreements, and Contract Exceeding \$100,000 in Federal Funds.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Name and Address of Organization

Name and Title of Submitting Official

Signature

Date

U.S. DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension. 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS OF REVERSE)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title(s) of Authorized Representative(s)

Signature(s)

Date

Form AD-1048 (1/92)

FSMC Guidance for SFAs – June 1995
Appendix –E – Debarment/Suspension

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and /or debarment.

Form AD-1048 (1/92)

FSMC Guidance for SFAs – June 1995
Appendix E – Debarment/Suspension

S A M P L E

ENERGY POLICY AND CONSERVATION ACT
CONTRACT ADDENDUM

Food Service Management Company (FSMC) and the School Food Authority

agree to comply with the Energy Policy and Conservation Act (P.L. 94-163) for the duration of the contract.

For: _____
FSMC

For: _____
the Board of Education

Signature

Signature

Title

Title

Date

Date

Certificate of Independent Price Determination

Both the school food authority and the Food Service Management Company (offeror) shall execute this Certificate of Independent Price Determination.

Name of Food Service Management Company

Name of School Food Authority

(A) By submission of this offer, the offeror certifies and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement, or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit, an offer for the purpose of restricting competition.

(B) Each person signing this offer on behalf of the Food Service Management Company certifies that:

(1) He or she is the person in the offerors organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above; or

(2) He or she is not the person in the offeror's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to (A)(1) through (A)(3) above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above.

To the best of my knowledge, this Food Service Management Company, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

Signature of Food Service Management
Company's Authorized Representative

Title

Date

In accepting this offer, the SFA certifies that no representative of the SFA has taken any action which may have jeopardized the independence of the offer referred to above.

Signature of School Food Authority's
Authorized Representative

Title

Date

Note: Accepting a bidder's offer does not constitute award of the contract.